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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Amendment of Part 20 and 24 of the Commission's Rules — Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap	)	WT Docket No. 96-59
	)	
Amendment of the Commission's Cellular PCS Cross-Ownership Rule	)	GN Docket No. 90-314

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To: The Commission

BELLSOUTH COMMENTS

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April 15, 1996

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SUMMARY

BellSouth supports the Commission's proposal to implement the court's mandate in *Cincinnati Bell Telephone Co. v. FCC*, 69 F.3d 752 (6th Cir. 1995) ("*Cincinnati Bell*") by eliminating all spectrum caps except the 45 MHz broadband CMRS cap. The primary basis for the 35 MHz cellular/PCS spectrum cap was the Commission's concern that a cellular licensee may act anticompetitively by aggregating spectrum sufficient to limit the number of potential competitors. The Sixth Circuit found that this rationale lacked factual support and thus ruled that the cap was arbitrary and capricious. There was no record of cellular providers engaging in anticompetitive behavior at the time the cellular/PCS cap was adopted, there was no such record when *Cincinnati Bell* was decided, and there *is* no such record now. To the extent that a spectrum cap is warranted, regulatory parity requires that a single cap apply equally to all CMRS providers.

To the extent the Commission is concerned about disseminating Broadband PCS licenses among a number of different entities, this goal has been accomplished by the exclusion of cellular providers from bidding on in-region licenses for the A, B, and C Blocks. These licenses have been or will be awarded to entities other than the incumbent cellular providers in an area, and they may not be acquired by the competing cellular carriers in the future, due to the broadband CMRS cap. Thus, the broadband CMRS cap accomplishes the goal of broad dissemination of licenses by ensuring that there will be at least five separate broadband CMRS providers in each market.

BellSouth strongly supports the Commission's reevaluation of the cellular attribution rule which was found arbitrary and capricious in *Cincinnati Bell*. The Commission should attribute to an applicant only that cellular spectrum over which it may exercise control. BellSouth proposes a similar rule for cellular attribution: a cellular licensee's spectrum shall be attributable to any applicant with a 50 percent or greater equity ownership interest, a 50 percent or greater voting interest, or any controlling general partner interest in the cellular licensee.

BellSouth also supports adoption of the definition of small business contained in Part 90 of the Commission's rules to ensure that very small businesses benefit from F Block preferences, but it opposes extension of installment payment plans to the D and E Block auctions. The Commission previously rejected the idea of allowing small businesses and entrepreneurs to use installment payments for all blocks in favor of setting aside blocks for their use. BellSouth supports that policy decision.

The Commission should not modify or waive the disclosure requirements contained in Section 24.813 of the Commission's rules. A number of PCS bidders complained to the FCC during the C Block auction that some bidders were "fronts" for speculators or companies that did not qualify for C Block licenses. Full disclosure would have discouraged such fronts, or at least permitted their detection before the auction.

Because the D, E, and F Blocks are highly interdependent, the Commission should award these licenses pursuant to simultaneous auctions. Not only will such auctions ensure that these licenses are awarded efficiently, they will promote participation by small businesses and entrepreneurs.

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BELLSOUTH COMMENTS

BellSouth Corporation ("BellSouth"), by its attorneys, hereby submits comments in response to the Commission's *Notice of Proposed Rule Making*, WT Docket No. 96-59, GN Docket No. 90-314, FCC 96-119 (Mar. 20, 1996), *summarized* 61 Fed. Reg. 13133 (1996) ("*NPRM*"). BellSouth supports the Commission's proposal to implement the court's mandate in *Cincinnati Bell Telephone Co. v. FCC*, 69 F.3d 752 (6th Cir. 1995) ("*Cincinnati Bell*"), regarding the cellular/PCS cap and related attribution rules. Additionally, BellSouth comments on several of the proposals in the *NPRM* concerning modification of the D, E, and F Block PCS auction rules.

I. THE 45 MHz BROADBAND CMRS SPECTRUM CAP OBVIATES THE NEED FOR ADDITIONAL SPECTRUM CAPS

BellSouth has previously suggested that a broadband CMRS cap obviates the need for other spectrum caps.[1] Rather than adopt only a broadband CMRS cap, however, the Commis

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[1] *See, e.g.*, BellSouth Petition for Reconsideration, GN Docket No. 90-314, Filed Dec. 8,
(continued...)

sion created three separate spectrum caps that limit the ability of PCS licensees to aggregate spectrum within the same geographic area. These caps are as follows:

- A 35 MHz cap on the amount of cellular and PCS spectrum that can be aggregated (cellular/PCS cap);[2]
- A 40 MHz cap on the amount of Broadband PCS spectrum that can be aggregated (PCS cap);[3]
- A 45 MHz cap on the amount of broadband CMRS spectrum (cellular, PCS, SMR) that can be aggregated (broadband CMRS cap).[4]

In *Cincinnati Bell*, however, the court found the cellular/PCS cap to be arbitrary and capricious, concluding that "the FCC provided little or no factual support" for its concern that cellular licensees would engage in anticompetitive behavior.[5] Further, the court stated that, although avoiding excessive concentration of licenses is a laudable goal, the Commission cannot preclude a class of potential licensees from eligibility without substantial economic analysis.[6] Based on the foregoing, the court could find no factual basis for upholding the cellular/PCS spectrum cap and remanded the issue to the Commission for reconsideration. As a result, the Commission now proposes to eliminate all caps except for the broadband CMRS cap. BellSouth

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1 (...continued)
1993, at 10-14; BellSouth Comments on Further Reconsideration, GN Docket No. 90-314, filed Aug. 30, 1994, at 21-24.

2 47 C.F.R. § 24.204(a); *Amendment of the Commission's Rules to Establish New Personal Communications Services*, GN Docket No. 90-314, *Memorandum Opinion and Order*, 9 F.C.C.R. 4957, 4983 (1994) ("*PCS MO&O*").

3 47 C.F.R. § 24.229(c); *PCS MO&O*, 9 F.C.C.R. at 4983.

4 47 C.F.R. § 20.6; *see Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, *Third Report and Order*, 9 F.C.C.R. 7988, 8104-05 (1994).

5 *Cincinnati Bell Tel. Co. v. FCC*, 69 F.3d 752, 762-63 (6th Cir. 1995)

6 69 F.3d at 764.

strongly supports this proposal which would allow cellular carriers to acquire an additional 20 MHz of in-region PCS spectrum.

A. The Sixth Circuit's Observations Remain True - There Is No Demonstrable Record For Subjecting Cellular Providers To A Separate Spectrum Cap

In finding the cellular/PCS cap arbitrary and capricious, the Sixth Circuit noted that the Commission failed to provide any factual support for its conclusion that a cap was necessary to ensure that cellular providers do not engage in anticompetitive behavior.[7] There was no record of cellular providers engaging in any anticompetitive behavior when the cellular/PCS cap was adopted; there was no such record when *Cincinnati Bell* was decided; and there *is* no such record now.[8] BellSouth is unaware of any recent Commission finding that a cellular provider has acted anticompetitively.[9]

The primary basis for the cellular/PCS spectrum cap is the Commission's concern that a cellular licensee may acquire excess market power by aggregating spectrum sufficient to limit

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7 69 F.3d at 762-63.

8 The court warned the FCC that it would closely scrutinize the record the FCC develops if it decides to retain the cap. Although "the FCC may simply find more support for its conclusions[,] '[n]ot all remands result in the reinstatement of the original decision with merely a more polished rationalization.' Perhaps the FCC's reexamination of the Cellular eligibility rules will result in a modification of those rules." 69 F.3d at 765 (citing *Schurtz Communications, Inc. v. FCC*, 982 F.2d 1043, 1050 (7th Cir. 1992)).

9 Indeed, there was no mention of competitive problems in the Commission's report to Congress on CMRS competition. *See Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, FCC 95-317, *First Report* (Aug. 18, 1995).

the number of potential competitors.[10] This concern was unfounded at the time of the PCS rulemaking and it is even more baseless today. The private carrier and common carrier paging, SMR, and cellular industries developed into highly competitive industries without the benefit (or detriment) of spectrum caps. There was no evidence that cellular licensees were aggregating spectrum in a manner designed to preclude entry of potential competitors. Indeed, the fact that a non-cellular licensee, Nextel, was able to aggregate substantial SMR spectrum to create the Enhanced SMR service as a cellular competitor proves that cellular licensees have not done so.

Under a single 45 MHz CMRS cap, each of the two cellular licensees in a given market would be able to acquire a maximum of 20 MHz of PCS spectrum. In fact, the size and number of the PCS spectrum blocks ensures that, at most, only one of the two in-region cellular carriers could aggregate 20 MHz of PCS spectrum. Cellular carriers are ineligible for the 30 MHz blocks (A, B, and C) under a 45 MHz cap,[11] leaving only the three 10 MHz blocks (D, E, and F) for spectrum aggregation by cellular carriers. Moreover, one of those blocks (F) is reserved for entrepreneurs and small businesses, and most cellular carriers would not be eligible for holding such licenses.[12]

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10 *See Amendment of the Commission's Rules to Establish New Personal Communications Services*, GN Docket No. 90-314, *Second Report and Order*, 8 F.C.C.R. 7700, 7746 (1993) ("*PCS Second Report*"); *Memorandum Opinion and Order*, 9 F.C.C.R. 4957, 4999 (1994); *Third Memorandum Opinion and Order*, 9 F.C.C.R. 9806, 6913 (1994).

11 Acquisition by a cellular carrier of a 30 MHz PCS license in-region would result in the carrier holding 55 MHz of CMRS spectrum, which is not permitted under the 45 MHz cap.

12 According to the Commission, 86% of the nation's cellular service is provided by ten companies. *Implementation of Section 309(j) of the Communications Act — Competitive Bidding*, PP Docket No. 93-253, *Fifth Report and Order*, 9 F.C.C.R. 5532, 5578 (1994). None of these ten companies would qualify for the Entrepreneur Block.

Thus, even if one assumes that one or both cellular carriers will acquire PCS spectrum, together they will not be able to acquire more than 20 MHz of the 120 MHz of licensed PCS spectrum. Other CMRS competitors will have access to the remaining 100 MHz of PCS spectrum and to the 19 MHz of 800 and 900 MHz SMR spectrum. Accordingly, the 45 MHz cap, coupled with the PCS spectrum block allocation plan, makes it impossible for cellular carriers to acquire enough PCS spectrum to deter competitive entry and makes the additional cellular/PCS cap unnecessary.

In this competitive atmosphere, non-cellular PCS providers will maintain a competitive advantage. A 30 MHz PCS licensee has spectrum located in a single band which permits operation of a single network that utilizes the same transmitters and antennas for the delivery of its service. A cellular carrier using PCS to supplement its cellular service must aggregate blocks of 800 MHz cellular spectrum and 2 GHz spectrum together. This will require the establishment and operation of two separate networks of base stations using different transmitters and antennas. In addition, subscribers to a combined cellular-PCS system will need specialized dual-band phones, which will be more costly and less convenient for users than single-band PCS equipment.

The Commission has acknowledged that it cannot adopt rules based solely on speculation that companies may act anticompetitively. Instead, there must be a factual record. The Commission has ample regulatory tools to address speculative competitive concerns.[13] Thus,

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[13] When cellular rules were first being crafted, for example, there was concern that unless telephone companies were excluded from cellular eligibility, they would dominate the cellular and dispatch markets. *See, e.g. NARUC v. FCC*, 525 F.2d 630, 637-38 (D.C. Cir.), *cert. denied*, 425 U.S. 992 (1976). Rather than place artificial limits on telephone (continued...)

there is no factual basis for the exclusion of a potential class of PCS licensees to prevent behavior that may never materialize.

B. The Entrepreneur Block Plan Ensures a Wide Dissemination of PCS Licenses

As the court stated in *Cincinnati Bell*, avoiding excessive concentration of licenses is a laudable goal, but a class of potential licensees cannot be kept from full participation in PCS without a substantial economic justification.[14] To the extent the Commission is concerned about disseminating Broadband PCS licenses among a number of different entities, the Commission must establish a record showing that licenses are not being distributed among a wide variety of parties. Further, the court has stated that a detailed economic analysis must be conducted to support any remedial measures that would exclude one class of prospective licensees to promote

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13 (...continued)
company participation in cellular, however, the Commission decided to monitor technological and competitive developments and act accordingly. The Court of Appeals sustained this decision, noting that

> The Commission retains a duty of continual supervision of the development of the system as a whole, and this includes being on the lookout for anticompetitive effects. The serious anticompetitive effects, if they arise at all, will do so only after full implementation begins.

525 F.2d at 638 (footnote omitted).

14 69 F.3d at 764.

broad dissemination.[15] Additionally, the Commission must establish that less restrictive alternatives could not accomplish the same objective.[16]

BellSouth notes that PCS licenses have been broadly disseminated already because cellular providers were excluded from bidding on in-region licenses for the A, B, and C Blocks. These licenses have been or will be awarded to entities other than the incumbent cellular providers in an area, and they may not be acquired by the competing cellular carriers in the future, due to the broadband CMRS cap. Thus, the broadband CMRS cap accomplishes the goal of broad dissemination of licenses by ensuring that there will be at least five separate broadband CMRS providers in each market.

The Entrepreneur Blocks also promote the broad dissemination of PCS licenses. In most markets, the existing cellular carriers will not qualify for the Entrepreneur Blocks due to their size,[17] thus ensuring the presence of two new non-cellular PCS licensees virtually everywhere. Accordingly, the Entrepreneur Block plan predetermines that there will be a diverse variety of Broadband PCS licensees and there is no need for maintaining a more restrictive exclusionary rule.

Additionally, the auction regime itself impedes the artificial, economically speculative aggregation of licenses. Licensees must pay for the spectrum they acquire. To date, they have spent billions of dollars to acquire PCS licenses. Thus, it would be prohibitively expensive for

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15 69 F.3d at 764.

16 69 F.3d at 762-63 (citing *Motor Vehicles Ass'n v. State Farm*, 463 U.S. 29, 48 (1983)).

17 *See* note 12 *supra*.

cellular licensees to acquire PCS spectrum simply to forestall competition, even if that were possible.

The competitive bidding rules also provide incentives (*i.e.*, bidding credits and installment payments) to encourage entrepreneurs to enter the wireless area,[18] thus increasing the number of potential applicants who will be able to participate in various CMRS industry segments. Given these incentives, the presence of new entrants in various spectrum auctions will make it even more difficult for any single entity to acquire licenses for the purpose of establishing undue market power and/or eliminating the potential for competition. If the C Block auction is any indication, these new entrants are financially more capable than traditional communications providers.

C. The Cellular/PCS Cap Is Inconsistent With The Commission's Regulatory Parity Goals

In keeping with the Congressional mandate associated with Section 332 of the Communications Act, the Commission has followed a policy of treating similarly situated licensees in the same manner.[19] The Commission has held that "equaliz[ing] the regulatory requirements applicable to all mobile service providers by allowing competing operators to offer the same portfolio of service options and packages . . . is required by Congress' mandate that comparable

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18 *Implementation of Section 309(j) of the Communications Act — Competitive Bidding*, PP Docket No. 93-253, *Second Report and Order*, 9 F.C.C.R. 2348, 2388-93 (1994); *Fifth Report and Order*, 9 F.C.C.R. at 5571-97.

19 *See Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, *Second Report and Order*, 9 F.C.C.R. 1411, 1413 (1994); *see also Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965); *Public Media Center v. FCC*, 587 F.2d 1322, 1331 (D.C. Cir. 1978); *Cincinnati Bell*, 69 F.3d at 768.

mobile services receive similar regulatory treatment."[20] The FCC has made clear that it views cellular and PCS as essentially fungible[21] and that SMR is substantially similar to cellular.[22] Accordingly, cellular, PCS, and SMR are similar services which should be subject to the same regulatory treatment.[23]

Despite the similarity of cellular, PCS, and SMR services, the Commission has imposed various spectrum aggregation caps on each service. SMR licensees may aggregate 45 MHz of spectrum under the broadband CMRS cap. They may acquire 40 MHz of PCS spectrum and combine it with 5 MHz of SMR spectrum. Cellular licensees, however, may only acquire 10 MHz of PCS spectrum under the cellular/PCS cap. Further, a PCS provider may only acquire 40 MHz of PCS spectrum.

Regulatory parity requires that, if a spectrum cap is warranted, a single cap apply equally to all similarly situated providers. The 45 MHz broadband CMRS cap accomplishes this result. It allows cellular, PCS, and SMR licensees to compete equally by allowing each type of licensee to aggregate equal amounts of spectrum. A cellular provider with 25 MHz of cellular spectrum can acquire 20 MHz of PCS spectrum; a 30 MHz PCS provider may obtain 15 MHz of additional

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20 *Eligibility for the Specialized Mobile Radio Services*, GN Docket No. 94-90, *Report and Order*, 10 F.C.C.R. 6280, 6300 (1995) ("*SMR Eligibility Order*").

21 *See PCS Second Report*, 8 FCC Rcd. at 7715, 7725, 7727, 7732-33, 7742-47, 7764 & n.120; *see also Cincinnati Bell*, 69 F.3d at 768.

22 *SMR Eligibility Order*, 10 F.C.C.R. at 6288.

23 *See Cincinnati Bell*, 69 F.3d at 768.

PCS and SMR spectrum; and an SMR licensee also can aggregate PCS and cellular spectrum until it obtains a total of 45 MHz. Accordingly, the PCS cap and cellular/PCS cap should be eliminated.

D. Applicants Should Not Be Attributed With Spectrum Held By Structurally Separated Affiliates

The Commission's rules currently require BellSouth and other Bell Companies to provide cellular service only through a structurally separated subsidiary.[24] The U.S. Court of Appeals for the Sixth Circuit, however, has ordered the Commission to reexamine the vitality of this requirement in light of its determination that structural separation with regard to the BOC provision of PCS service would disserve the public interest.[25] The court found that:

> time is of the essence on this issue, because the FCC is currently auctioning off the Personal Communications Service licenses. New Personal Communications Service licensees expect to be providing service early next year. The structural separation requirements will prevent the Bell companies from competing with Personal Communications Service providers on a level playing field. Accordingly, we believe the FCC should determine as soon as possible whether the structural separation requirement placed upon the Bells is necessary and in the public interest.[26]

Despite this statement, the FCC now proposes to auction the final PCS licenses without having acted on the structural separation requirement.

BOCs should not be penalized by the Commission's failure to act on the court's mandate. The court determined that the Commission should act quickly so that BOCs were not precluded

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24 47 C.F.R. § 22.903.

25 *Cincinnati Bell Tel. Co. v. FCC*, 69 F.3d 752,768 (6th Cir. 1995).

26 *Id.* at 768.

from full participation in the PCS auctions, yet this is exactly what will happen unless the Commission acts here. BOCs are barred from directly providing cellular service, except through structurally separated affiliates. BOCs have no ability to take advantage of 25 MHz of cellular spectrum. Accordingly, BellSouth urges the Commission not to attribute to the BOCs spectrum of their cellular affiliates that must be structurally separated under the rules.

II. THE CELLULAR TWENTY PERCENT ATTRIBUTION RULE SHOULD BE REPLACED WITH A CONTROLLING INTEREST TEST

BellSouth strongly supports the Commission's reevaluation of the cellular attribution rule,[27] which was found to be arbitrary and capricious in *Cincinnati Bell*.[28] Although a bright-line test for determining control simplifies the qualification process, the twenty percent attribution rule at issue here "bears no relationship to the ability of an entity with a minority interest in a Cellular licensee to obtain a Personal Communications Service license and then engage in anticompetitive behavior."[29]

The Commission should attribute to an applicant only that cellular spectrum over which it may exercise control. For the most part, this is the approach the Commission took with regard to Entrepreneur Block licenses. As long as qualifying businesses maintain at least 50.1 percent equity, 50.1 percent of the voting rights, and all of the general partnership interests in an applicant, the applicant qualifies for C Block licenses. BellSouth proposes a similar rule for cellular attribution: a cellular licensee's spectrum shall be attributable to any applicant with a 50

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27 *NPRM* at ¶ 72.

28 69 F.3d at 758-59.

29 69 F.3d at 759.

percent or greater equity ownership interest, a 50 percent or greater voting interest, or any controlling general partner interest in the cellular licensee.[30] Any such rule should be applicable to the 45 MHz broadband CMRS cap that will govern cellular-PCS cross-ownership after elimination of the cellular/PCS cap.

III. THE COMMISSION SHOULD NOT BROADEN ITS ENTREPRENEUR BLOCK LICENSING RULES

A. To Ensure Widespread Dissemination of PCS Licenses, The Commission Should Redefine What Constitutes a Small Business

BellSouth supports the Commission's proposal to modify its small business definition to benefit "very small businesses."[31] Accordingly, BellSouth urges the Commission to use the definition of small business contained in Part 90 of the Commission's rules.[32] Pursuant to Section 90.814(b), a small business is an entity that, together with its affiliates, has average gross revenues of less than $15 million for the previous three years.[33] Adoption of such a definition will ensure that truly small businesses are provided an opportunity to become PCS licensees and

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30 Alternatively, the Commission simply could state that applicants will be attributed the cellular spectrum over which they exercise control, as defined in the cellular rules and related cases. Although this would eliminate the bright line test, cellular licensees should be familiar with this control test and it would withstand judicial scrutiny as an attribution standard.

31 *NPRM* at ¶ 50.

32 47 C.F.R. § 90.814(b).

33 47 C.F.R. § 90.814(b)(1)(ii). In certain instances, Section 90.814 also defines a small business as one whose average gross revenues (combined with those of its affiliates) do not exceed $3 million for the previous three years. 47 C.F.R. § 90.814(b)(1)(i). BellSouth supports adoption of the least restrictive small business definition contained in this rule.

will facilitate the dissemination of PCS licenses among a wider variety of entities. For the most part, large businesses obtained A and B Block licenses, "mid-size" businesses will obtain C Block licenses, and D and E Block licenses likely will be awarded to entities of various sizes. The Commission should assume that F Block licenses will be awarded to entrepreneurs and truly small businesses.

Adoption of the least restrictive small business definition contained in Part 90 also is consistent with regulatory parity. There is no need for a different definition of small business for each telecommunications service. The Commission should adopt a uniform definition.

B. Small Business Preferences Should Only Be Available For F Block Licenses

Rather than set aside spectrum for small businesses and entrepreneurs, BellSouth previously urged the Commission to allow small businesses to use installment payments to satisfy the cost of acquiring any PCS license at auction.[34] Such a plan would have leveled the playing field between businesses of various sizes. Instead of adopting preferences such as installment payments and bidding credits that could be used by small businesses and entrepreneurs in any PCS auction, the Commission set aside two blocks of PCS spectrum for licensing only to such entities. Special small business incentives should be limited to those blocks. Authorizing small business preferences in the D and E Blocks as well would reopen the question of limiting the eligibility for F Block participation to entrepreneurs only.

The auction for the C Block, which was set aside for entrepreneurs and small businesses, will be over soon and the F Block auction will commence after this proceeding is concluded.

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[34] BellSouth Comments, PP Docket No. 93-253, filed Nov. 10, 1993 at 18-26.

The eligibility limits, bidding credits, and installment payment plans applicable to those auctions are sufficient to ensure that small businesses will have ample opportunities to participate in PCS. The Commission should not now allow small businesses to utilize installment payment plans in the D and E Block auctions.[35] First, it is not necessary. Small businesses with limited access to capital have an ample opportunity to acquire licenses under an installment payment plan in the F Block auction. Second, and most important, allowing installment payments to be used in the D and E Block auctions would eliminate, or at a minimum, call into serious question, the rationale for setting aside the F Block. If it is no longer necessary to insulate entrepreneurs and small businesses from bidding by larger companies, the F Block should be open to all bidders. In addition, allowing small businesses to bid with guaranteed government financing against privately financed, well-capitalized firms would have a destabilizing effect on the auction and could jeopardize the development of PCS. Some small businesses might have incentives to bid unrealistically high prices without a viable business plan, given the availability of installment payments. As a result, companies with the financial wherewithal to build efficient systems could lose out to speculative bidders with little at risk and who would build minimal systems and then sell out as soon as possible.

IV. THE OWNERSHIP DISCLOSURE REQUIREMENTS SHOULD NOT BE MODIFIED

Section 24.813 of the Commission's rules requires that a potential bidder disclose fully the real party(ies) in interest to the application. In this regard, bidders must provide "a list of any

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[35] *NPRM* at ¶ 54.

business, five percent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director attributable stockholder, or key management personnel of the applicant."[36] Because it was considered burdensome and difficult to administer, the FCC waived this requirement for the short-form applications submitted by C Block bidders.[37] This Commission now proposes to limit this disclosure requirement to only those businesses holding or applying for CMRS or PMRS licenses.[38]

A number of PCS bidders complained to the FCC during the C Block auction that some bidders were "fronts" for speculators or companies that did not qualify for C Block licenses.[39] Full disclosure would have discouraged such fronts, or at least permitted their detection before the auction. BellSouth is concerned that the Commission's proposed modification of the disclosure requirements may create additional problems similar to those alleged to exist in the C Block auction. Although the disclosure requirements may seem somewhat burdensome, they will help ensure that only eligibles will participate in F Block auctions.[40] Accordingly,

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36 47 C.F.R. § 24.813(a)(1).

37 *See NPRM* at ¶¶ 78-79; Waiver of Section 24.813 of the Commission's Rules, PP Docket No. 93-253, DA 95-1130 (W.T.B. May 19, 1995).

38 *NPRM* at ¶ 81.

39 *See, e.g.*, D. Wayne, "GO Echoes Nextwave Suspicions That Some Bidders Are 'Fronts,'" Radio Communications Report, Mar. 11, 1996, at 5; Communications Daily, March 12, 1996, at 6; E. Douglas, "Nextwave Complains to FCC About Rival," The San Diego Union-Tribune, March 13, 1996, at C-2.

40 Additionally, the disclosure requirements permit all bidders to obtain detailed information necessary for the development of comprehensive auction strategies and contingency plans.

BellSouth urges the Commission not to streamline the disclosure requirement for F Block short-form applications.

V. THE D, E, AND F BLOCKS SHOULD BE AUCTIONED IN A SINGLE, SIMULTANEOUS AUCTION

BellSouth supports the Commission's tentative conclusion that the D, E, and F Blocks should be auctioned in a simultaneous multiple round auction.[41] The Commission has previously found that simultaneous auctions are likely to award interdependent licenses more efficiently than sequential auctions.[42] In fact, simultaneous multiple round auctions were used to award narrowband PCS licenses, including those for which designated entities received bidding credits. These types of auctions provide bidders with more information about the value of interdependent licenses than other types of auctions, permit bidders to pursue back-up strategies, and award licenses to those who value them most highly.[43]

The D, E, and F Block PCS licenses are highly interdependent. Each license authorizes the holder to provide service to a BTA over 10 MHz of PCS spectrum. The main difference among the three blocks is that the F Block is set aside for small businesses and entrepreneurs. As a result, only small businesses and entrepreneurs are eligible to bid on all three blocks.

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41 *NPRM* at ¶ 85.

42 *Implementation of Section 309(j) of the Communications Act — Competitive Bidding*, PP Docket No. 93-253, *Fifth Report and Order*, 9 F.C.C.R. 5532, ¶ 30.

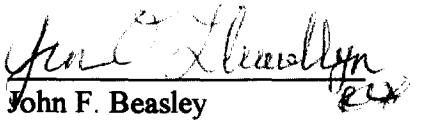
43 *Id.*

CONCLUSION

For the foregoing reasons, BellSouth urges the Commission to eliminate all spectrum caps, other than the broadband CMRS cap, replace the twenty percent cellular attribution test with a controlling interest test, refrain from broadening its Entrepreneur Block rules, retain existing short-form disclosure requirements, and auction the D, E, and F Blocks in a single simultaneous auction.

Respectfully submitted,

BELLSOUTH CORPORATION

By: 

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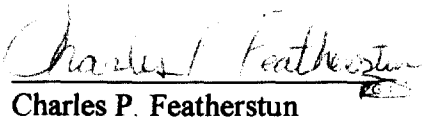
By: 

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